

REMARKS

Claims 1-43 are pending in this application. Claims 9-15, 24-30, and 37-43 have been withdrawn, and therefore claims 1-8, 16-23, and 31-36 are at issue. Applicants respectfully traverse the rejection of claims 1-8, 16-23, and 31-36 under 35 U.S.C. § 102(e) as anticipated by Strasser et al. (U.S. Patent No. 5,612,890). Reconsideration is respectfully requested.

Applicants submit that the rejection of claims 1-8, 16-23, and 31-36 is improper because Strasser et al. is not a valid § 102(e) reference. In particular, Strasser et al. has an effective filing date of May 19, 1995, while the claims currently pending in the application have an effective filing date of October 24, 1994, which predates the May 19, 1995 filing date of Strasser et al. It follows, therefore, that Strasser et al. is not a proper 35 U.S.C. § 102(e) prior art reference with respect to any of the pending claims.

In order to determine whether 35 U.S.C. § 102(e) applies, the effective filing date of the application must be determined and compared with the effective date of the alleged 102(e) reference. MPEP § 706.02(a). Under MPEP § 706.02(f)(1), if the alleged 102(e) reference did not result from, or claim the benefit of, an international application, then the 102(e) date of the reference is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. § 119(e) or 120. MPEP § 706.02(f)(1)(I)(B). Because Strasser et al. does not claim priority to any previously filed applications, international or U.S., the effective filing date of Strasser et al. is its actual filing date, i.e., May 19, 1995.

To determine the effective filing date of an application, MPEP § 706.02(V) states that:

(A) If the application is a continuation or divisional of one or more earlier U.S. applications or international applications ... the effective filing date is the same as the earliest filing date in the line of continuation or divisional applications.

(B) If the application is a continuation-in-part of an earlier U.S. application or international application, any claims in the new application not supported by the specification and claims of the parent application have an effective filing date equal to the filing date of the new application. **Any claims which are fully supported under 35 U.S.C. 112 by the earlier parent application have the effective filing date of that earlier parent application.** (Emphasis Added)

As indicated in the Cross Reference to Related Applications section of the pending application, the pending application claims priority as a continuation application from U.S. Application Serial No. 08/864,750, filed May 28, 1997, which is a continuation of U.S. Application Serial No. 08/782,513 (which issued as U.S. Patent No. 5,682,476), which is a continuation of U.S. Application Serial No. 08/483,119, filed Jun. 7, 1995 and which, in turn, claims priority as a continuation-in-part from U.S. Application Serial No. 08/328,324 ("the '324 application"), filed October 24, 1994. Thus, the present application claims priority as a continuation to U.S. Application Serial No. 08/483,119, filed Jun. 7, 1995, and claims priority as a continuation-in-part to the '324 application, filed October 24, 1994.

Because the pending application claims priority as a continuation to U.S. Application Serial No. 08/483,119, filed June 7, 1995, its effective filing date is at least June 7, 1995, under MPEP § 706.02(V)(A). However, if support for the subject matter of each of the pending claims is found in the '324 application, the effective filing date of the present application is October 24, 1994 under MPEP § 706.02(V)(B).

Applicants assert that the pending claims of the present application are fully supported by the '324 application. In particular, Fig. 2 of the pending application and the

corresponding description in the specification related thereto fully supports the pending claims. Additionally, this figure and description are substantially the same as Fig. 2 and the associated description within the specification of the '324 application. Because each of the pending claims is fully supported by the '324 application, it follows that the present application has an effective filing date of October 24, 1994, under MPEP § 706.02(V)(B).

Because, as noted above, the effective filing date of the present application is October 24, 1994, which predates the Strasser et al. effective filing date of May 19, 1995, Strasser et al. is not a valid 102(e) reference. Still further, Strasser et al. is not a valid prior art reference under any other section 35 U.S.C. § 102. As a result, Applicants submit that the rejection of claims 1-8, 16-23, and 31-36, as anticipated by Strasser et al., should be withdrawn.

CONCLUSION

For the foregoing reasons, Applicants respectfully request reconsideration and allowance of rejected claims 1-8, 16-23, and 31-36. Additionally, Applicants submit that, upon allowance of independent claims 1, 16, and 31 (which are generic with respect to the species previously identified by the Examiner), each of the non-elected claims 9-15, 24-30, and 37-43 (which depend from one of the allowed generic claims) is allowable and should be indicated as non-withdrawn under MPEP § 809.02(c)(B).

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call their attorney at the number listed below.

Respectfully submitted,

By:



Roger A. Heppermann

Registration No. 37,641

Attorney for Applicants

MARSHALL, GERSTEIN & BORUN LLP

6300 Sears Tower

233 South Wacker Drive

Chicago, Illinois 60606

312-474-6300

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